

**CITY OF BEAVERTON PURCHASING CODE — CONSULTATION SELECTION: ARCHITECTURAL,
ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING, LAND SURVEYING
AND RELATED SERVICES CONTRACTS**

CHAPTER 48

**CONSULTATION SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING,
TRANSPORTATION PLANNING, LAND SURVEYING AND RELATED SERVICES CONTRACTS**

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48-0105 Introductions

The provisions of this chapter apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services, under Contracts and set forth in the following procedures:

1. Procedures through which the City selects Consultants to perform Architectural, Engineering, Land, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
2. Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by the City.

48-0110 Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and BPC 46- 0110, the following definitions apply to this chapter:

A. Consultant

Means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when the City is entering into a direct Contract under BPC 48-0200(A)(3) or (4), the “Consultant” must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

B. Estimated Fee

Means the City’s reasonably projected fee to be paid for a Consultant's services under the anticipated Contract excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

C. Price Agreement

For purposes of this chapter, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include Consultant compensation information, with:

1. No guarantee of a minimum or maximum purchase; or
2. An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.

D. Project

Means all components of the City’s planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering and, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, under a Contract.

E. Transportation Planning Services

Are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will

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require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

48-0120 List of Interested Consultants; Performance Record

A. Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, may annually submit a statement describing their qualifications and related performance information to the City's Purchasing Agent office address. The City may use this information to create a list of prospective Consultants and shall update this list at least once every two years.

B. The City may compile and maintain a record of each Consultant's performance under Contracts with the City, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505) the City may make available copies of the records.

48-0130 Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

A. When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the City shall follow the applicable selection procedure under BPC 48-0200 (Direct Appointment Procedure), BPC 48-0210 (Informal Selection Procedure) or BPC 48-0220 (Formal Selection Procedure). The City subject to this section (1) may solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation, only after the City has selected the most qualified Consultant in accordance with the applicable selection procedure. In following the Direct Appointment Procedure under 48-0200, the City may base its initial selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

B. When selecting Consultants to perform Related Services, the City shall follow one of the following selection procedures:

1. When selecting a Consultant on the basis of qualifications alone, the City shall follow the applicable selection procedure under either BPC 48-0200 (Direct Appointment Procedure), BPC 48-0210 (Informal Selection Procedure) or BPC 48-0220 (Formal Selection Procedure);
2. When selecting a Consultant on the basis of price competition alone, the City shall follow either the provisions under BPC chapter 47 for obtaining and evaluating Bids, or BPC 48-0200 (Direct Appointment Procedure) if the requirements of BPC 48-0200(A) apply; and
3. When selecting a Consultant on the basis of price and qualifications, The City shall follow either the provisions under BPC chapter 47 for obtaining and evaluating Proposals, or BPC 48-0200 (Direct Appointment Procedure) if the requirements of BPC 48-0200(A) apply. The City subject to this section (A) may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

C. The City is not required to follow the procedures in Section (A) or Section (B) of this rule, when the City has established Price Agreements with more than one Consultant and is establishing the criteria and procedures the City will use to select a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the City uses to select a single Consultant, when the City has established Price Agreements with more than one Consultant, must meet the requirements of BPC 48-0270 (Price Agreements).

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D. The City may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (A) and (B) of this rule. If the City uses electronic methods to screen and select a Consultant, the City shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with BPC 47-0330 (Electronic Procurement).

E. For purposes of this chapter, a “mixed” Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. The City’s classification of a procurement that will involve a “mixed” Contract will be determined by the predominant purpose of the Contract. The City will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the City shall comply with the requirements of ORS 279C.110 and section (A) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the City shall comply with the requirements of ORS 279C.120 and section (B) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, and this code, the City shall comply with the applicable provisions of the Public Contracting Code and chapters 46, 47 and 49 of the Beaverton Purchasing Code that match the predominant purpose of the Contract.

F. Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the City by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, the City shall comply with these chapter 48 rules in procuring those Services.

G. Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by the City for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

1. The term "competitive proposal", for purposes of ORS 279C.107 includes proposals under BPC 48-0200 (Direct Appointment Procedure), BPC 48-0210 (Informal Selection Procedure), BPC 048-0220 (Formal Selection Procedure) or BPC 48-0130(B)(3)selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under BPC 48-0270 (Price Agreements).
2. For purposes of proposals received by the City under BPC 48-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while the City may make proposals under BPC 48-0200 (Direct Appointment Procedure) open for public inspection following the City’s decision to begin Contract negotiations with the selected Consultant, BPC 48-0200 proposals are not required to be open for public inspection until after the City has executed a Contract with the selected Consultant.
3. In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the City is conducting discussions or negotiations with proposers who submit proposals that the City has determined to be closely competitive or to have a reasonable chance of being selected for award, the City may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, the City may open proposals in such a way as to avoid disclosure of the contents until after the City executes a Contract with the selected Consultant. If the City determines that it is in the best interest of the City to do so, the City may make proposals available for public inspection following the City’s issuance of a notice of intent to award a Contract to a Consultant.
4. Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

I. As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, the City may not:

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1. Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or
2. Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

J. The requirements of ORS 279C.307 and section (I) of this rule apply in the following circumstances, except as provided in section (K) of this rule:

1. The City requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is “subject to ORS chapter 279C” includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.
2. The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:
 - a. Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;
 - b. Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;
 - c. Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;
 - d. Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and
 - e. Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (10)(a) of this rule.

K. The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

1. To the City's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to the City's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement.
2. To the City's Procurement of both pre-construction services and construction services through a single “Construction Manager/General Contractor” Procurement, as defined in OAR 137-049-0610. Provided, however, the restrictions of

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ORS 279C.307 do apply to the City's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

48-0200 Direct Appointment Procedure

A. The City may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

1. The City finds that an Emergency exists; or
2. The Estimated Fee to be paid under the Contract does not exceed \$100,000; or does not exceed \$100,000; provided, however, that the Contract Review Board shall approve any contract when the Estimated Fee to be paid is greater than \$50,000.

B. The City may select a Consultant for a Contract under this rule from the following sources:

1. The City's list of Consultants that is created under BPC 48-0120 (List of Interested Consultants; Performance Record);
2. Another Contracting Agency's list of Consultants that the other Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that other Contracting Agency; or
3. All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the City reasonably can identify under the circumstances.

C. The City shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

1. The Consultant's performance obligations and performance schedule;
2. Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
3. Any other provisions the City believes to be in the City's best interest to negotiate.

48-0210 Informal Selection Procedure (Intentional Omitted)

48-0220 Formal Selection Procedure

A. Subject to BPC 48-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), The City shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either BPC 48-0200 (Direct Appointment Procedure) or under BPC 48-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at the City's discretion.

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B. When the City uses the formal selection procedure, the City shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

1. Except as provided in subsection (2) of this section, the City shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
 - a. The City shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.
 - b. The City shall include a brief description of the following items in the advertisement:
 - i. The Project;
 - ii. A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the City seeks;
 - iii. How and where Consultants may obtain a copy of the RFQ or RFP; and
 - iv. The deadline for submitting a Proposal or response to the RFQ or RFP.
2. In the alternative to advertising in a newspaper as described in subsection (B)(1) of this rule, the City shall publish each RFP and RFQ by one or more of the electronic methods identified in BPC 46-0110. The City shall comply with subsections (B)(1)(a) and (B)(1)(b) of this rule when publishing advertisements by electronic methods.
3. The City may send notice of the RFP or RFQ directly to all Consultants on the City's list of Consultants that is created and maintained under BPC 48-0120 (List of Interested Consultants; Performance Record).

C. The City may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the City may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

1. When the City uses the RFQ procedure, the City shall include the following, at a minimum, in each RFQ:
 - a. A brief description of the Project for which the City is seeking Consultants;
 - b. A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the City seeks for the Project;
 - c. Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
 - d. The deadline for submitting a response to the RFQ;
 - e. A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the City seeks;
 - f. The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

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- g. A statement whether or not the City will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
 - h. A Statement that Consultants responding to the RFQ do so solely at their expense and that the City is not responsible for any Consultant expenses associated with the RFQ.
- 2. The City may include a request for any or all of the following in each RFQ:
 - a. A statement describing Consultants' general qualifications and related performance information;
 - b. A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;
 - c. A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - d. A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;
 - e. The number of Consultants' experienced staff available to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;
 - f. Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
 - g. Consultants' geographic proximity to and familiarity with the physical location of the Project;
 - h. Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - i. If the City is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
 - j. Consultants' ability to assist the City in complying with public art acquisition requirements, pursuant to City Code;
 - k. Intentionally deleted.
 - l. Consultants' ability to assist the City in complying with the solar energy technology requirements of ORS 279C.527; and
 - m. Any other information the City deems reasonably necessary to evaluate Consultants' qualifications.

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3. The City shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The City may appoint to the evaluation committee City employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. The City may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions.
 4. The City may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:
 - a. Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
 - b. Placing a pre-determined number of the highest scoring Consultants on a short list;
 - c. Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
 5. After the evaluation committee reviews, scores and ranks the responding Consultants, the City shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ, or if fewer than three Consultants fail to meet the City's minimum requirements then:
 - a. The City may establish a short list of fewer than three qualified Consultants; or
 - b. The City may cancel the RFQ and issue an RFP.
 6. No Consultant will be eligible for placement on the City's short list established under subsection (C)(4) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the City's RFQ evaluation committee.
 7. Except when the RFQ is cancelled, the City shall provide a copy of the subsequent RFP to each Consultant on the short list.
- D. The City shall use the procedure described in this section (D) of this rule when issuing an RFP for a Contract described in section (A) of this rule.
1. When the City using the formal selection procedure, the City shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:
 - a. General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.
 - b. The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the City does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

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- i. Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- ii. Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;
- iii. The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- iv. The recent, current and projected workloads of the staff and resources referenced in section (D)(1)(b)(iii), above;
- v. The proportion of time Proposers estimate that the staff referenced in section (D)(1)(b)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- vi. Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under BPC 48-0120 (List of Interested Consultants; Performance Record);
- vii. References and recommendations from past clients;
- viii. Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
- ix. Status and quality of any required license or certification;
- x. Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;
- xi. Results from interviews, if conducted;
- xii. Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- xiii. If the City is selecting a Consultant to provide Related Services, pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- xiv. Any other criteria that the City deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or

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predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

- c. Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
 - d. Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
 - e. The date and time Proposals are due, and the delivery location for Proposals;
 - f. Reservation of the right to seek clarifications of each Proposal;
 - g. Reservation of the right to negotiate a final Contract that is in the best interest of the City;
 - h. Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the City;
 - i. A Statement that Proposers responding to the RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP;
 - j. A statement directing Proposers to the protest procedures set forth in this chapter;
 - k. Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
 - l. A statement whether or not the City will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
 - m. A request for any information the City deems reasonably necessary to permit the City to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and
 - n. A sample form of the Contract.
2. The City shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the City may include the same members who served on the RFQ evaluation committee. The City may appoint to the evaluation committee City employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be a City employee. If the City procedure permits, the City may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions.
- a. No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the City's RFP evaluation committee for the Contract;
 - b. If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation

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committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

- c. The evaluation committee shall provide to the City the results of the scoring and ranking for each Proposer.
3. If the City does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the City will begin negotiating a Contract with the highest ranked Proposer. The City shall direct negotiations toward obtaining written agreement on:
 - a. The Consultant's performance obligations and performance schedule;
 - b. Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
 - c. Any other provisions the City believes to be in the City's best interest to negotiate.
4. The City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (D)(3) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the City may end the particular formal solicitation. Nothing in this rule precludes the City from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

48-0230 Ties Among Proposers

A. If the City is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the City may select a candidate through any process that the City believes will result in the best value for the City taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the City under this section (A) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the City and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the City and the selected Proposer shall proceed with negotiations under BPC 48-0210(C) or BPC 48-0220(D)(3), as applicable.

B. If the City is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the City shall follow the procedure set forth in BPC 46-0300, (Preferences for Oregon Goods and Services), to select the Consultant.

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48-0240 Protest Procedures

A. **RFP Protest and Request for Change.** Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The City may not consider any protest or request for change that is submitted after the submission deadline.

B. **Protest of Consultant Selection.**

1. **Single Award.** In the event of an award to a single Proposer, the City shall provide to all Proposers a copy of the selection notice that the City sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.
2. **Multiple Award.** In the event of an award to more than one Proposer, the City shall provide to all Proposers copies of the selection notices that the City sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the City no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers or a sufficient number of higher ranked Proposers are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.
3. The City may not consider any protest that is submitted after the submission deadline.

C. **Resolution of Protests.** A duly authorized representative of the City, including the Purchasing Agent or Finance Director, shall resolve all timely submitted protests within a reasonable time following the City's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the City shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

48-0250 Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs

The City may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure, (BPC 48-0200), the Informal Selection Procedure (BPC 48-0210) and the Formal Selection Procedure (BPC 48-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the City believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the City is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents.

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48-0260 Two-Tiered Selection Procedure for Public Improvement Projects

A. If the City;

1. Requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by the City, and
2. A State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, then the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

B. A State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 137-048-0210 (Informal Selection Procedure) and 137-048-0220 (Formal Selection Procedure), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under 137-048-0200 (Direct Appointment Procedure), and shall notify the City of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

C. In accordance with the qualifications based selection requirements of ORS 279C.110, the City shall either:

1. Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the City's public improvement; or
2. Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the City's public improvement through an alternative process adopted by the City, consistent with the provisions of the applicable RFP, if any, and these chapter 48 rules. The City's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the City and may include provisions to allow the City to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The City's alternative process may include, but is not limited to, one or more of the following methods:
 - a. A general written direction from the City to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the City's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the City is required. However, the City may provide written notice to the State Contracting Agency that the City's general written direction is not to be applied for a particular Procurement and describe the process that the City will utilize for the particular Procurement. In order for a written direction from the City consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the City may apply to the highest ranked firms that are selected under the terms of the Procurement document.
 - b. An intergovernmental agreement between the City and the State Contracting Agency outlining the alternative process that the City has adopted for a Procurement or series of Procurements.

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- c. Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

D. The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

E. Nothing in these chapter 48 rules should be construed to deny or limit the City's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by the City.

48-0270 Price Agreements

A. The City may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the City cannot determine the precise quantities of those Services which the City will require for a Project or closely related group of Projects over a specified time period.

B. When establishing Price Agreements under this rule, the City shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with BPC 48-0130(A) or BPC 48-0130(B), as applicable. The City may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

C. In addition to any other applicable solicitation requirements set forth in these chapter 48 rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

1. Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;
2. Specify whether the City intends to award a Price Agreement to one Consultant or to multiple Consultants. If the City will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the City will use to select a Consultant for each individual work order or task order. Subject to the requirements of these chapter 48 rules, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the City's sole discretion; provided, however, in circumstances where direct contracts are not permitted, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with BPC 48-0130(B) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of BPC 48-0200.

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3. Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

D. All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the City. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

1. The Consultant's performance obligations and performance schedule;
2. The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to the City, as determined solely by the City, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.
3. Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
4. Any other provisions the City believes to be in the City's best interest.

Post-Selection Considerations

48-0300 Prohibited Payment Methodology; Purchase Restrictions

A. Except as otherwise allowed by law, the City shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

1. Consultant's costs under the Contract plus a percentage of those costs; or
2. A percentage of the Project construction costs or total Project costs.

B. Except as otherwise allowed by law, the City shall not enter into any Contract in which:

1. The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
2. The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.

C. Except in cases of Emergency or in the particular instances noted in the subsections below, the City shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the City from any Consultant under a Contract with the City to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

1. The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with the City to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680); or

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2. That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such Contracts.

48-0310 Expired or Terminated Contracts; Reinstatement

A. If the City enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the City may proceed as follows, subject to the requirements of subsection (B) of this rule:

1. If the Contract has expired as the result of Project delay caused by the City or caused by any other occurrence outside the reasonable control of the City or the Consultant, and if no more than one year has passed since the Contract expiration date, the City may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the City and the Consultant shall continue performance under the Contract as amended; or
2. If the City or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the City may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

B. The City may proceed under either subsection (A)(1) or subsection (A)(2) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

1. Promote efficient use of public funds and resources and result in substantial cost savings to the City;
2. Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
3. Result in a Contract that is still within the scope of the final form of the original Procurement document.

48-0320 Contract Amendments

A. The City may amend any Contract if the City, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the City shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the City reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

B. The City may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

C. All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the City and must receive all required approvals before the amendments will be binding on the City.

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D. Aggregate Increase Limitations. The authority to amend Contracts under this section is limited by the affect the amendment has on Contract Price. The maximum increase resulting from all Contract Amendments shall not exceed 25% of the initial Contract Price absent Contract Review Board approval; provided, however, that the amount of a Contract Amendment entered into pursuant to the authority of subsection A or B of this section shall not be added to the base for calculating the 25% maximum limit. For example, in the course of construction related to a \$100,000 Contract to add on to a building, asbestos is discovered. The initial Contract is amended by issuance of a \$50,000 Amendment to prevent environmental pollution and remove the asbestos. Specific Contract Review Board approval is not required if all necessary conditions set forth in one or more of the number paragraphs of subsection A or B are met. Later, an \$18,000 Amendment is issued to deal with new design features. The \$18,000 Amendment is permitted without specific Contract Review Board approval because the Amendment does not exceed 25% of the initial \$100,000 Contract Price. A second Amendment in the amount of \$9,000 would need Contract Review Board approval because the two \$18,000 and \$9,000 Amendments taken together total more than \$25,000 which exceeds the allowable 25%.